

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UMBERTO LAURO,

Plaintiff,

-against-

5:23-CV-1635 (LEK/MJK)

CHRISTOPHER COMMUNITY, *et al.*,

Defendants.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On December 27, 2023, Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983 and Title VII of the Civil Rights Act. Dkt. No. 1 (“Complaint”). On January 3, 2024, the Honorable Andrew T. Baxter, United States Magistrate Judge, issued a report and recommendation recommending dismissal of the Complaint. Dkt. No. 4 (“Report and Recommendation”). Plaintiff has not filed an objection to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

II. BACKGROUND

The Court assumes familiarity with Judge Baxter’s Report and Recommendation, as well as with the facts detailed therein. See R. & R. at 3–4.

III. STANDARD OF REVIEW

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and

recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019) (cleaned up). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. Id. Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report and Recommendation (Dkt. No. 4) is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that this action is **DISMISSED** without prejudice and with leave to amend; and it is further

ORDERED, that Plaintiff be given forty-five (45) days to file an amended complaint identifying the nature of any state action by particular individuals or entities giving rise to violations of his constitutional rights. Plaintiff is warned that any amended complaint must be a complete and separate pleading. Plaintiff must state all of his claims in the new pleading and may not incorporate by reference any part of his original complaint; and it is further

ORDERED, that if Plaintiff files an amended complaint, such amended complaint be referred to the Honorable Mitchell J. Katz, United States Magistrate Judge, for initial review; and it is further

ORDERED, that if Plaintiff does not elect to file an amended complaint within the proposed deadline, or request an extension of time to do so, the Clerk enter judgment dismissing this action without further order of the Court; and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: February 21, 2024
Albany, New York


LAWRENCE E. KAHN
United States District Judge